IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4229 OF 2004

The State of Maharashtra ...Applicant

Versus

Ketan Kamlakar Tirodkar ...Respondent

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Mrs.P.H.Kantharia, A.P.P. for Applicant.

Mr.V.V.Pai for Respondent.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 21, 2004.

P.C.

1. Respondent was initially appearing in-person, therefore, he was informed that the matter would involve several legal issues. The Respondent volunteered to engage Advocate and accordingly, Mr.Pai has been instructed to appear on behalf of the Respondent. Matter was adjourned on 19th October 2004 at the request of Mr.Pai. Today, Mr.Pai has appeared for Respondent, who is also present in Court. Mr.Pai undertakes to file

Vakalatnama during the course of the day. On this assurance hearing of the matter was proceeded with.

2. Heard Counsel for the parties. This Application takes exception to the order passed by the Special Judge dated 23rd July 2004 as well as 25th August 2004 allowing the interim bail application preferred by the Respondent. The Special Judge has acceded to the request of the Respondent for being released on interim bail on the ground that he should get fair opportunity to pursue private complaint filed by him against the police officer and others. The Special Judge by ad-interim order dated 23rd July 2004, released the Respondent on interim bail, during the pendency of the interim bail application. Later on, that order has been confirmed by order dated 25th August 2004. In the decision of the 25th August 2004, the Special Judge has adverted to several aspects which, to my mind, are extraneous to the issue of deciding prayer for bail, whether regular bail or the interim bail, as the case may be.

3. In the recent Judgment delivered by this

Court on 29th September 2004 in the case of Anil Gote vs.State of Maharashtra in Criminal Application No.4023 of 2004, on analysing the relevant provisions and the legal position, I have taken the view that even when the Special Judge or the High Court is inclined to release the accused involved in offence under special Act such as MOCA, it is obligatory for the Court to first record satisfaction about the fulfilment of the conditions specified in Section 24(4) of the Act. It is only on recording such satisfaction that the bar to release the accused involved in offence under MOCA is lifted and the Court can then proceed to grant interim bail or regular bail, as the case may be.

4. In the present case, the Special Judge in the impugned decisions has not adjudicated those aspects at all; but has adverted to several other contentions which are extraneous to the issue of grant or refusal of bail. The only reason that has weighed with the Special Judge for releasing the Respondent on bail, can be discerned from Paragraph 13 of the impugned order which records that the Respondent deserves to be enlarged on bail, so as

to enable him to effectively pursue his remedy of complaint filed against police officer and others. That by itself, cannot be a ground, either for releasing the accused on interim bail or for that matter, regular bail to an accused involved in the offence under the special enactment such as MOCA. As the basic issues have not been dealt with by the Court below, the order as passed in favour of the Respondent cannot be sustained and the same will have to be set aside.

5. According to Mr.Pai for the Respondent, even while considering the correctness of the order passed by the Special Judge in favour of the Respondent which is put in issue in the present application, it is open for this Court to examine the merits of the case, so as to satisfy itself, whether the Respondent deserves to be enlarged on bail. However, on reconsideration of the matter, on instructions of the Respondent, who is personally present in Court, Mr.Pai states that the Respondent would prefer to approach the Trial Court with fresh application, which in turn, can be decided on its own merits, as any observation made

by this Court, may affect the either party and which situation can be avoided by adopting the course suggested by him. I find the request to be reasonable.

6. Accordingly, while allowing this application, the liberty is reserved to the Respondent to make fresh application before the Special Judge for appropriate reliefs which will be decided on its own merits in accordance with law. The Respondent shall present the said application before the Special Judge within two weeks from today and also surrender before the Special Judge, consequent to which, the Special Judge would proceed to decide the said application on merits. This is necessary because no bail application can be considered unless the accused is in custody, either in jail or in Court’s custody.

7. Application succeeds on the above terms.

8. All concerned to act on the ordinary copy of this order, duly authenticated as true copy by the Office.

A.M.KHANWILKAR, J.